

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Lashawn Sharpe, individually and on behalf of all  
other similarly situated,

Plaintiff,

-against-

A&W Concentrate Company and Keurig Dr  
Pepper Inc.,

Defendants.

Case No.: 1:19-cv-00768 (BMC)

**DEFENDANTS' RULE 56.1  
STATEMENT IN OPPOSITION TO  
SHARPE'S MOTION FOR SUMMARY  
JUDGMENT**

Defendants A&W Concentrate Company and Keurig Dr Pepper Inc., by and through the undersigned counsel, hereby submit the following statement in opposition to Plaintiff Sharpe's Motion for Summary Judgment pursuant to Local Civil Rule 56.1.

1. Defendants manufacture and sell A&W Root Beer.

**Admitted.**

2. The front of the label of Defendants' A&W Root Beer states "Made With Aged Vanilla."

**Admitted.**

3. The front of the label of Defendants' A&W Root Beer does not state "Artificial Vanilla" or "Artificially Flavored Vanilla," or "Vanilla Artificial Flavored."

**The labels do not use those precise terms. However, the labels on bottles and packaging of A&W Root Beer state conspicuously that the beverages are both "naturally and artificially flavored," and the Nutrition Facts Label on bottles and cans of A&W Root Beer state that the beverages contain both "natural and artificial flavors." See Declaration**

of Creighton Magid submitted in connection with Defendants' Motion for Summary Judgment ("Magid Decl.") at ¶¶ 2 - 3 and Exhibits A and B.

4. Defendants' A&W Root Beer contains ethyl vanillin.

**Admitted. Ethyl vanillin comprises 0.71% of the assayed chemicals detected in A&W Root Beer, according to test results proffered by Plaintiff. See Alliance Technologies GCMS Analysis (attached as Exhibit 1 to the Declaration of Michael R. Reese) at 5.**

5. Ethyl vanillin is an artificial vanilla flavor.

**Admit that ethyl vanillin is an artificial product and may be used as a flavoring. However, its use in A&W Root Beer is to create a "creamy" taste profile.**

6. Defendants manufacture and sell A&W Cream Soda.

**Admitted.**

7. The front of the label of Defendants' A&W Cream Soda states "Made With Aged Vanilla."

**Admitted.**

8. The front of the label of Defendants' A&W Cream Soda does not state "Artificial Vanilla" or "Artificially Flavored Vanilla," or "Vanilla Artificial Flavored."

**The labels do not use those precise terms. However, the labels on bottles and packaging of A&W Cream Soda state conspicuously that the beverages are both "naturally and artificially flavored," and the Nutrition Facts Label on bottles and cans of A&W Cream Soda state that the beverages contain both "natural and artificial flavors." See Magid Decl. at ¶¶ 2 - 3 and Exhibits A and B.**

9. Defendants' A&W Cream Soda contains ethyl vanillin.

**Admitted. Ethyl vanillin comprises 4.61% of the assayed chemicals detected in A&W Root Beer, according to test results proffered by Plaintiff. See Alliance Technologies GCMS Analysis (attached as Exhibit 1 to the Declaration of Michael R. Reese) at 5.**

10. Ethyl vanillin is an artificial vanilla flavor.

**Admit that ethyl vanillin is an artificial product and may be used as a flavoring. However, its use in A&W Root Beer is to create a “creamy” taste profile.**

Dated: January 31, 2020

Respectfully submitted,

/s/ Creighton R. Magid  
Creighton R. Magid (admitted *pro hac vice*)  
DORSEY & WHITNEY LLP  
1401 New York Avenue, N.W., Suite 900  
Washington, D.C. 20005  
Phone: (202) 442-3555  
Fax: (202) 442-3199  
magid.chip@dorsey.com

Elizabeth Rozon Baksh  
DORSEY & WHITNEY LLP  
51 West 52nd Street  
New York, NY 10019  
Telephone: (212) 415-9200  
Facsimile: (646) 607-8476  
baksh.elizabeth@dorsey.com

*Attorneys For Defendants A&W CONCENTRATE  
COMPANY AND KEURIG DR PEPPER INC.*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 31, 2020, I caused copies of the foregoing  
DEFENDANTS' RULE 56.1 STATEMENT IN OPPOSITION TO SHARPE'S MOTION FOR  
SUMMARY JUDGMENT to be filed with the Clerk of Court using the CM/ECF system which  
will send notification of the filing to all counsel of record.

By: /s/ Creighton R. Magid  
Creighton R. Magid